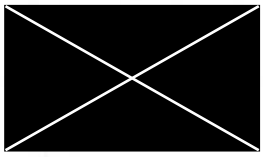
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

ENRIQUE ARREOLA DIAZ Petitioner, v. JUAN BALTAZAR, *in his official capacity* as Warden of the Aurora ICE Processing Center; GEORGE VALDEZ, *in his official capacity* as Field Office Director of the Aurora Field Office of Enforcement and Removal Operations, U.S. Immigrations and Customs Enforcement; TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, MARKWAYNE MULLIN, *in his official capacity* as Secretary, U.S. Department of Homeland Security PAMELA JO BONDI, in her official capacity as Attorney General of the United States; Respondents.	Case No. 1:26-cv-01248 PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF 

INTRODUCTION

1. Petitioner-Plaintiff ("Petitioner") Enrique Arreola Diaz is a citizen of Mexico. On information and belief, officers with U.S. Immigration and Customs Enforcement ("ICE") apprehended Mr. Arreola Diaz on or about March 3, 2026, in Wyoming. ICE is currently detaining him unlawfully pursuant to 8 U.S.C. § 1225(b).
2. Petitioner is currently detained at the GEO Contract Detention Facility in Aurora, Colorado. *See* ICE Detainee Locator Results, *Exhibit 1*.
3. Petitioner entered the United States without inspection on or about 2012. He was not apprehended or detained at that time.
4. Following Petitioner's detention on March 3, 2026, he was issued a Notice to Appear ("NTA") and placed in removal proceedings. He is currently scheduled for a Master Hearing before an Immigration Judge ("IJ") on April 8, 2026. *See* Executive Office for Immigration Review Automated Case Information, Exhibit 2.
5. Petitioner is eligible for relief from removal in the form of Cancellation of Removal as prescribed by 8 U.S.C. §1229b(b) for certain nonpermanent residents, as he will be able to show to an Immigration Court that (1) he has been continuously present in the United States for a period of over 10 years, (2) he has no disqualifying convictions, (3) he has qualifying relatives (he has a U.S. citizen, will soon have a U.S. citizen wife, and will have another U.S. citizen step-child) that would suffer extreme and exceptionally unusual hardship in the event of his removal, and (4) he is a person of good moral character that merits discretion. 8 U.S.C. § 1229b(b)(1)(A)-(D). Petitioner is also eligible for and merits a favorable exercise of discretion towards release on bond throughout his immigration proceedings because he is not subject to mandatory detention, he is not a danger to the

community, nor is he a flight risk because he has every incentive to return to Immigration Court and defend against his removal so he can stay in the United States with his family.

6. On July 8, 2025, the U.S. Department of Homeland Security ("DHS") issued a new policy memorandum to all employees of ICE stating that "this message serves as notice that DHS, in coordination with the Department of Justice ("DOJ"), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act ("INA"), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." Memorandum, U.S. Immigration & Customs Enf't, Interim Guidance Regarding Detention Authority for Applications for Admission (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last visited on November 15, 2025). *Attached hereto* as Exhibit 3.

7. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision that unlawfully reinterpreted the INA. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), *attached hereto as* Exhibit 4. Prior to this decision, noncitizens like Mr. Arreola Diaz who had lived in the U.S. for many years, and were apprehended by ICE in the interior of the country, were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek custody redetermination hearings before Immigration Judges ("IJs"). Instead, in conflict with nearly thirty years of legal precedent, Petitioner is now wrongly considered subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and he remains in custody.

8. Petitioner's detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA

and its implementing regulations. Petitioner, who has resided in the U.S. and who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Rather, he should be detained, if at all, pursuant 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond.

9. Petitioner's current detention is also an unlawful deprivation of liberty that contravenes his established due process rights under the Fifth Amendment of the U.S. Constitution. Petitioner's detention is part of a nationwide pattern of action by Respondents and the U.S. Federal government where noncitizens in similar circumstances as Petitioner have been detained unlawfully under §1225(b)(2)(A). Not only have such noncitizens been unlawfully detained, but where federal District Courts have granted habeas petitions and ordered that bond hearing be held, IJs have then simply denied bond in fundamentally unfair proceedings, contrary to due process. *See* Kyle Cheney, *Judges keep ordering immigration hearings- but say the results are often a sham,* POLITICO (Mar. 6, 2026, 10:00 AM EST), https://www.politico.com/news/2026/03/06/immigration-case-hearings-judges-00815660. In these cases, Respondents have held bond hearings in order to give the appearance of compliance with the Courts' orders, but those hearings have been "fundamentally flawed or even pre-cooked, designed to result in findings of 'danger to the community' or 'flight risk' without a fair consideration of the evidence." *Id.*

10. In one such case, the District Court found that the bond decision that followed a grant of habeas corpus, "has indications of predetermined outcome," as its conclusion was "untethered by the facts and any logical conclusion to be determined from the facts," and "no fact cited in the order" supported its conclusion. *Lozhkhina v. Noem et. al*, No. 6:26-cv-3001-MDH, Doc. No. 14 (W.D. Mo. Feb. 10, 2026). In another, the District Court

ordered a petitioner's immediate release because the bond proceedings did not comply with due process or law. *Picado v. Hyde, et. al*, No. 1:26-cv-00065-JJM-PAS, Doc. No. 7 at 16 (D.R.I. Feb. 9, 2026).

11. The pattern of fundamentally unfair and predetermined bond decisions in response to Courts' grants of habeas corpus petitions has led some courts, including the District of Colorado, to order that, in any such bond proceeding, the burden must be placed on the government to prove, by clear and convincing evidence, that a petitioner is either a flight risk or a danger to the community, and not on the petitioner to prove a negative. *See L.G. v. Choate*, 744 F. Supp. 3d 1172, 1183-87 (D. Colo. 2024); *Salazar v. Dedos*, 14 806 F. Supp. 3d 1231, 2025 U.S. Dist. LEXIS 183335, at *14-15 (D.N.M. Sept. 17, 2025). Others have concluded that this pattern shows that no bond hearing before an IJ would comport with due process, as "immigration judges who provide neutral adjudications have been removed, and bond is systematically denied after a pro forma hearing with a predetermined outcome." *Ochoa v. Mason*, No 2:26-cv-00130, Doc. 20 at 4 n. 4 (S.D.W.V. Feb. 26, 2026).

12. Through this petition, Mr. Arreola Diaz asks this Court to find that Respondents have unlawfully detained him under § 1225(b)(2)(A), that his detention, if any, is appropriate under §1226(a). Mr. Arreola Diaz asks this Court to order Respondents to immediately release him from custody, because, as described above, a bond hearing before an IJ would not be fundamentally fair or adequately protect his Due Process rights. *Picado*, No. 1:26-cv-00065-JJM-PAS, Doc. No. 7 at 16; *Ochoa*, No 2:26-cv-00130, Doc. 20 at 4 n. 4.

13. If the Court does not order Petitioner's immediate release, Petitioner seeks, in the alternative, that the Court order Respondents to hold a custody redetermination hearing for

him before an IJ, under 8 U.S.C. § 1226(a), within seven days, and order that at that hearing, the government must bear the burden of proving, by clear and convincing evidence, that Petitioner is either a flight risk or a danger to the community; and that the IJ duly consider Petitioner's ability to pay when setting the conditions of bond and release. *See L.G. v. Choate*, 744 F. Supp. 3d at 1183-87; *Salazar v. Dedos*, 14 806 F. Supp. 3d 1231, 2025 U.S. Dist. LEXIS 183335, at *14-15; *See generally Abdi v. Nielsen*, 287 F. Supp. 3d 317 (W.D.N.Y. 2018); *Leslie v. Holder*, 865 F. Supp. 2d 627, 630 n. 1 (M.D. Penn. 2012).

CUSTODY

14. Petitioner is currently in the custody of ICE at the GEO Aurora Contract Detention Facility. *See* ICE Detainee Locator Results, Exhibit 1. He is therefore in 'custody' of the Department of Homeland Security, ICE, within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

15. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*
16. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).
17. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

18. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. *See* 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

19. Petitioner is "in custody" for the purpose of § 2241 because he was arrested and remains detained by Respondents.

20. This Court should grant the Petition for Writ of Habeas Corpus 'forthwith,' as Petitioner is unlawfully detained, and, as described above, a bond hearing will not be an adequate remedy. *Picado*, No. 1:26-cv-00065-JJM-PAS, Doc. No. 7 at 16; *Ochoa*, No 2:26-cv-00130, Doc. 20 at 4 n. 4.

VENUE

21. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because a substantial part of the events or omissions giving rise to the claim occurred in the District of Colorado. Petitioner is under the jurisdiction of ICE's Denver Field Office, and he is currently detained in Aurora, Colorado, at the GEO Aurora Contract Detention Facility. *See* Exhibit 1.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

22. Administrative exhaustion is unnecessary in this case as it would be futile. *See, e.g., Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).

23. It would be futile for Petitioner to seek a custody redetermination hearing before an IJ because of the BIA's recent decision holding that anyone who has entered the U.S. without inspection is now considered an "applicant for admission" who is "seeking admission" and therefore subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025); *see also Zaragoza Mosqueda v. Noem,* 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders exhaustion futile).

24. It would also be futile for Petitioner to seek a custody redetermination hearing before an IJ because of the recent pattern of IJs denying bond to noncitizens in similar circumstances in fundamentally unfair proceedings – "a pro forma hearing with a predetermined outcome." *Ochoa v. Mason*, No 2:26-cv-00130, Doc. 20 at 4 n. 4.

25. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v. Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471 (1999). (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

PARTIES

26. Petitioner is from Mexico and has resided in the U.S. since 2012. He is currently detained in the Aurora Contract Detention Facility in Aurora, Colorado. *See* Exhibit 1.

27. Respondent Juan Baltazar is sued in his official capacity as Warden of the Aurora Processing Center. In his official capacity, Respondent Juan Baltazar is Petitioner's immediate custodian.

28. Respondent George Valdez is sued in his official capacity as Field Office Director, Denver Field Office, Enforcement and Removal Operations, ICE. In his official capacity, Respondent George Valdez is the legal custodian of Petitioner.

29. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

30. Respondent Markwayne Mullin is sued in his official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Mullin is Petitioner's ultimate legal custodian.

31. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND AND ARGUMENT

32. The INA prescribes basic forms of detention for noncitizens in removal proceedings.

33. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a custody redetermination hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

34. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

35. Third, the INA authorizes detention of noncitizens who have received a final order of

removal, including those in withholding-only proceedings. *See* 8 U.S.C. § 1231 (a)-(b).

36. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

37. Following the enactment of the IIRIRA, the Department of Justice's Executive Office for Immigration Review ("EOIR") promulgated regulations clarifying that individuals who entered the country without inspection are generally detained under 8 U.S.C. § 1226(a), rather than § 1225. *See* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that "despite being applicants for admission, aliens who are present without having been admitted or paroled... will be eligible for bond and bond redetermination").

38. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received custody redetermination hearings before an Immigration Judge, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. See 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

39. For decades, long-term residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to custody redetermination hearings before an IJ, unless barred from doing so due to their criminal history.

40. In July 2025, however, ICE began asserting that all individuals who entered without inspection should be considered "seeking admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

41. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, departing from the INA's text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Attached hereto as Exhibit 4.

42. Respondents' new legal interpretation is plainly contrary to the statutory framework and its implementing regulations. Indeed, for decades, Respondents had applied § 1226(a) to people like the Petitioner. Defendants' new policies are thus not only contrary to law, but are arbitrary and capricious in violation of the Administrative Procedure Act ("APA"). They were also adopted without complying with the procedural requirements of the APA. *See* 5 U.S.C. §706(2)(A). They were also adopted without complying with the procedural requirements of the APA. 5 U.S.C. §706(2)(D).

43. Numerous federal courts have rejected this interpretation and instead have consistently found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *See e.g.*, *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado); Leal-Hernandez v. Noem,* 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez Benitez v. Francis,* 2025 WL 2371588 (S.D.N.Y. Aug. 13,

2025); *Jimenez v. FCI Berlin, Warden,* No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Kostak v. Trump,* 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Cuevas Guzman v. Andrews,* 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025); *see also Lepe v. Andrews,* No. 1:25-cv-01163-KES-SKO (HC) (E.D. Cal. Sept. 23, 2025), *Lopez v. Hardin,* No. 2:25-cv-830-KCD-NPM (M.D. Fla. Sept. 25, 2025), *and Chafla v. Scott,* No. 2:25-cv-00437-SDN (D. Maine Sept. 21, 2025).

44. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court should independently interpret the statute and give the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent. 603 U.S. 369 (2024).

45. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Following IIRIRA, the Executive Office for Immigration Review ("EOIR") issued regulations clarifying that individuals who entered the country without inspection were not considered detained under § 1225, but rather under § 1226(a). *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

46. The statutory context and structure also make clear that § 1226 applies to individuals who have not been admitted and entered without inspection. In 2025, Congress added new

mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. *See* The Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (8 U.S.C. § 1226(c)(1)(E)).

47. By specifically referencing inadmissibility for entry without inspection under 8 U.S.C. § 1182(6)(A), Congress made clear that such individuals are otherwise covered by § 1226(a). Thus, § 1226 plainly applies to noncitizens charged as inadmissible, including those present without admission or parole.

48. The Supreme Court has explained that § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 297, 2987 (2018). In contrast, Section 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.* at 289 (emphases added).

49. Furthermore, § 1225(b)(2) specifically applies only to those "seeking admission," and the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are "coming or attempting to come into the United States." The use of the present progressive tense would exclude noncitizens like Petitioner who are apprehended in the interior years after they entered, as they are no longer "seeking admission" or "coming [...] into the United States." *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in INA § 235(b)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle,

denotes an ongoing process").

50. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner, who had entered the U.S. years before he was apprehended, and this Court should order his immediate release.

51. In the alternative, the Court should order that a new custody redetermination hearing for Petitioner under §1226(a). If the Court orders this, it should order that, at said hearing, the government must bear the burden of proving, by clear and convincing evidence, that Petitioner is either a flight risk or a danger to the community. While, under normal circumstances, federal regulations place the burden on a detained noncitizen to demonstrate in a custody redetermination hearing that he would not be such a risk or danger, the circumstances of Petitioner's detention are not normal. *See Salazar v. Dedos*, 806 F. Supp. 3d 1231, 2025 U.S. Dist. LEXIS 183335, at *14-15. Petitioner's strong liberty interest and the exceptionally high risk of erroneous deprivation of liberty in his case, and his present unlawful detention in violation of his constitutional and statutory rights, justify shifting the burden to the government to demonstrate that his continued detention is justified by clear and convincing evidence, and not placing the burden on Petitioner to prove a negative. *See L.G. v. Choate*, 744 F. Supp. 3d 1172, 1183-87; *Salazar*, 2025 U.S. Dist. LEXIS 183335, at 15-24.

52. In any new custody redetermination proceeding, an IJ must consider Petitioner's ability to pay when setting the terms of bond and release, and this Court should order that this be done if it orders a new hearing. *See generally Abdi v. Nielsen*, 287 F. Supp. 3d 317; *Leslie v. Holder*, 865 F. Supp. 2d 627, 630 n. 1 ("the imposition of a [bond] which the agency knows cannot be met [is] tantamount to detention.").

STATEMENT OF FACTS

53. Petitioner is a citizen of Mexico.

54. Upon information and belief, Petitioner has resided in the U.S. since at least 2012.

55. Upon information and belief, Petitioner has not been arrested, charged with, or convicted of any crime that would make him subject to mandatory detention under 8 U.S.C. §1226(c).

56. On information and belief, Petitioner was apprehended by Immigration and Customs Enforcement ("ICE") on or about March 3, 2026 in Wyoming, was issued an NTA and placed in removal proceedings.

57. Petitioner remains detained at the GEO Contract Detention Center in Aurora, Colorado. *See* Exhibit 1.

58. An Immigration Judge is currently unable to consider a new bond request by Petitioner because the Immigration Court's jurisdiction has been effectively stripped under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), *attached hereto* as Exhibit 4.

59. Without relief from this Court, Petitioner faces continued detention without release.

COUNT I

Violation of 8 U.S.C. § 1226(a)

Unlawful Denial of Release on Bond

60. Petitioner restates and re-alleges all paragraphs 1 to 59 as if fully set forth herein.

61. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

62. Petitioner has not been, and will not be, provided with a custody redetermination hearing as required by law.

63. Petitioner's continuing detention is therefore unlawful.

COUNT II

Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19 Unlawful Denial of Release on Bond

64. Petitioner restates and realleges paragraphs 1 to 59 as if fully set forth here.

73. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and custody redetermination hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

74. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Violation of Fifth Amendment Right to Due Process

65. Petitioner restates and realleges paragraphs 1 to 59 as if fully set forth here.

66. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

67. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

68. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release. 424 U.S. 319, 334-335 (1976).

69. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

70. The risk of erroneous deprivation of liberty is exceptionally high in this case. Petitioner has ties to the community, including his U.S. citizen child and fiance.

71. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

72. Furthermore, the "fiscal and administrative burdens" of releasing Petitioner or providing Petitioner with a custody redetermination hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

73. A custody redetermination hearing before an IJ will not adequately protect Petitioner's due process rights, because of the recent pattern of IJs denying bond to similarly situated detainees in fundamentally unfair, predetermined proceedings. *Picado*, No. 1:26-cv-00065-JJM-PAS, Doc. No. 7 at 16; *Ochoa*, No 2:26-cv-00130, Doc. 20 at 4 n. 4.

74. If a custody redetermination hearing is held, the burden must be placed on the government to prove, by clear and convincing evidence, that Petitioner is either a flight risk or a danger to the community, and due consideration must be given to his ability to pay. *See L.G. v. Choate*, 744 F. Supp. 3d 1172, 1183-87; *Salazar*, 2025 U.S. Dist. LEXIS 183335, at 15-24; *Abdi v. Nielsen*, 287 F. Supp. 3d 317; *Leslie v. Holder*, 865 F. Supp. 2d 627, 630 n. 1.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

(1) Assume jurisdiction over this matter;

(2) Order, pursuant to the All Writs Act, 28 U.S.C. § 1651, and in order to preserve the Court's jurisdiction, that Petitioner not be transferred outside of this District;

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(4) Declare that Petitioner's detention is unlawful;

(5) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody;

(6) In the alternative, order Respondents to hold a custody redetermination hearing for Petitioner before an IJ, under 8 U.S.C. § 1226(a), within seven days, and

order that at that hearing, the government must bear the burden of proving, by clear and convincing evidence, that Petitioner is either a flight risk or a danger to the community, and that the IJ duly consider Petitioner's ability to pay when setting the conditions of bond and release;

(7) Order that, upon Petitioner's release, Respondents return to him any passport, identification documents, or other personal property of Petitioner that they may have in their possession;

(8) Award him his attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(9) Grant him any further relief this Court deems just and proper.

Date: March 25, 2026

Respectfully Submitted,

/s/Scott Brian Petiya
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Attorney for the Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I, Scott Brian Petiya, hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this 25th day of March, 2026.

/s/ Scott Brian Petiya. Esq.

Scott Brian Petiya